

## **Ethics & Discipline Update**

Barbara M. Seymour

Clawson and Staubes, LLC

[barbara@cslaw.com](mailto:barbara@cslaw.com)

(803) 904-1458

**PART ONE: 2021 South Carolina Disciplinary Case Summaries (selected)**

**PART TWO: 2021 SC Bar and ABA Ethics Advisory Opinion Summaries (selected)**

**PART THREE: 2021 Rule Revisions and Proposals**

**PART ONE: 2021 South Carolina Disciplinary Case Summaries (selected)**

### **Criminal Conduct**

1. Matter of Johnson. Lawyer was charged with state crimes including three counts of misconduct in office and embezzlement of public funds, and federal crimes including twenty-six counts of wire fraud, mail fraud, conspiracy, and theft of federal funds, all arising from misconduct as solicitor for the Fifth Judicial Circuit. Lawyer pled not guilty to the state court charges, which remain pending. Lawyer pled guilty to one count of wire fraud and the remaining federal charges were dismissed. Lawyer was sentenced to one year and one day in prison and is serving three years' supervised release. Disbarment (not retroactive to 2018 interim suspension), plus costs, by agreement (Op. #28043; July 7, 2021)
2. Matter of MacLean. As a result of a traffic stop, Lawyer was charged with four counts of possession of a controlled substance. The charges were dismissed by the solicitor because of concerns about the validity of the vehicle search. However, Lawyer admitted that she engaged in criminal activity and failed to report her arrest to ODC as required by rule. Also, Lawyer was terminated from 18 bankruptcy cases upon motions filed by the US Bankruptcy Trustee, which Lawyer ignored. Three-Year Suspension (retroactive to 2018 interim suspension), plus costs and Lawyers Helping Lawyers contract. (Op. #28044; July 7, 2021)
3. Matter of Harrison. The Supreme Court accepted Lawyer's motion to permanently resign in lieu of discipline. In his motion, Lawyer acknowledged that ODC could prove the allegations of misconduct. The Court did not state what those allegations were. Resignation Accepted. (August 4, 2021)

### **Dishonesty**

4. Matter of Haley. Lawyer was publicly reprimanded in North Carolina for failing to disclose prior suspensions (in South Carolina and Virginia) in an application for *pro hac vice* admission in a North Carolina criminal case. Lawyer did not contest reciprocal discipline. Public Reprimand. Petition for Rehearing pending. (Op. #28048; August 11, 2021)

### **Neglect and Lack of Communication**

5. Matter of Schnee. Lawyer failed to competently and diligently represent several clients between 2010 and 2018. He also repeatedly provided false information to ODC. (1) Lawyer

drastically neglected a court-appointed PCR case, including failing to meet with the client until the week before the hearing, failing to adequately explain the proceedings to the client, appearing at the hearing unprepared; and, failing to transmit an order to DMH for a mental evaluation of the client and lying to the judge about it. (2) Lawyer failed to properly advise a client about a decision not to pursue reconsideration of his sentence. (3) Lawyer neglected a motion for reconsideration of sentence in a criminal case for three years, effectively preventing the client from pursuing PCR. Lawyer also did not comply with the client's requests for his file. (4) Lawyer neglected an appeal, which was ultimately dismissed for failure to timely file documents. Lawyer did not disclose the dismissal to the client and continued to collect fees. Lawyer provided false information to ODC about his attempts to communicate with the client. (5) After one meeting with a client in prison, Lawyer took no action to pursue his matter in spite of receiving legal fees. Lawyer lied to ODC claiming he had done work that he in fact did not do. (6) Lawyer failed to communicate with his client and the solicitor in an appointed case, then lied to ODC in response to the ensuing complaint. (7) Lawyer neglected another criminal case, then failed to respond to ODC's Notice of Investigation. (8) Lawyer provided false statements to a clerk of court about an ODC subpoena in order to get out of a court appearance. Two sets of formal charges were filed. Lawyer appeared at the first hearing, admitted misconduct, and argued mitigation of sanction. Lawyer did not answer or appear at the second hearing. Disbarment, plus costs. (Op. #28007; February 10, 2021)

6. Matter of Brooker. Lawyer admitted misconduct in connection with several civil matters. (1) Lawyer agreed to look into federal civil claims for a client after a successful result in his criminal case. The client says he paid Lawyer \$250 for a filing fee in 2007 and Lawyer never informed him that he was not pursuing the case because it lacked merit. Lawyer says the payment was for his review of the case and that he did inform the client of his decision not to proceed. Since the purpose of the payment and the advice to the client were not reduced to writing, Lawyer refunded the money. (2) In a case accepted in 2004, Lawyer's contingency fee agreement permitted him to withdraw from representation of a client on written notice. Lawyer terminated the representation, but did not put it in writing. Lawyer was also cited for not explaining whether costs would be deducted prior to or after calculation of the fee. (3) Lawyer failed to pay two court reporter bills in 2011 because the clients did not pay him the money to cover them. Lawyer paid the bills within a month of the court reporter's complaint to ODC. For the next ten years, Lawyer timely paid court reporter bills without waiting for the clients to come up with the money. (4) A client made payments on a flat fee in a domestic case over two years, beginning in 2007. Lawyer did not hold the money in trust until it was earned. After a year, the client fired Lawyer due to lack of progress. In 2019, Lawyer refunded the money. (5) In 2011, a family court judge instructed Lawyer to prepare a proposed divorce decree. About a year later, the client filed a grievance because the decree had not been issued. Lawyer stated to ODC that he had submitted the proposed order about five months after it was requested, but he had no record of doing so. Lawyer submitted the proposal and delivered the final decree to the client within a month of notice of the ODC complaint. The Supreme Court accepted the agreement for discipline; however, the dissenting justice stated that an agreement on the same misconduct had been rejected by the Court in 2012, that this agreement was submitted eight years later with no explanation, there had been no additional misconduct, and that a confidential admonition was the appropriate sanction under the circumstances. Public Reprimand, plus costs, by agreement. (Op. #28019; March 31, 2021)

7. Matter of Korn. (1) In 2009, Lawyer grew his practice representing lenders in default proceedings in a way that was “not controlled or permanent” including swelling to 150 employees and incurring significant debts to a legal support services company assisting his firm with foreclosure litigation. When business declined precipitously by about 2014, Lawyer was significantly overleveraged, with an unpaid debt to the contractor of approximately \$800,000. Lawyer had received reimbursement for most of those costs from clients, but did not use the funds to pay the debt. To salvage the firm, Lawyer merged with a Florida-based law firm. Lawyer signed a confession of judgment in favor of the contractor. The Florida firm took control of Lawyer’s accounts receivable and did not pay the debt to the contractor. When the contractor was not paid, litigation and a disciplinary investigation ensued. Initially, Lawyer responded to the contractor’s grievance with an allegation that it was filed in an attempt to use ODC to gain an advantage in the civil case. (2) Lawyer represented a lender in a foreclosure action that resulted in a sale. Lawyer’s delays ultimately resulted in cancellation of the sale. Lawyer failed to timely return the buyer’s earnest money deposit. Public Reprimand, plus costs, by agreement. (Op. #28021; April 21, 2021)
8. Matter of Jackson. In one case, Lawyer accepted a fee in 2014 to domesticate a judgment in Virginia. Lawyer was unable to perfect service, so he terminated the representation without refunding the \$1,800.00 unearned fee. Lawyer stopped accepting the client’s calls about the refund. In a second case, Lawyer received a \$4,500.00 settlement for an inmate in a case against the Department of Corrections. Lawyer did not disburse the money and stopped communicating with the client. Lawyer used the money for his own purposes. Both clients filed disputes with the SC Bar Resolution of Fee Disputed Board and were awarded full refunds. Lawyer did not pay up. Lawyer failed to respond to an ODC subpoena issued in the first grievance. Lawyer was placed on interim suspension in 2014 for failing to cooperate and the Lawyers’ Fund for Client Protection covered the clients’ claims. In a third matter, a medical provider complained that Lawyer held valid letters of protection in several civil cases but did not pay its liens or provide information about the statuses of the cases. One of the cases had actually settled, but instead of paying the provider’s lien of \$4,320.00, Lawyer used the money for his own benefit. In addition, Lawyer was held in civil contempt by a family court judge based on a finding that he willfully failed to pay child support arrearages of \$1,875.00 when he had the ability to pay. Lawyer’s parents paid the money so the Lawyer could avoid jail. Disbarment, plus costs and restitution to LFCP, by agreement. (Op. #28022; April 21, 2021)
9. Matter of Smiley. Lawyer was retained to represent a client in a motion for reconsideration following an Alford plea. After the motion was denied, Lawyer filed the notice of appeal and motion to be relieved as counsel. The filing was not timely and did not meet substantive requirements. The Court of Appeals sent Lawyer several letters giving him the opportunity to correct the deficiencies. Lawyer mistakenly believed that the Office of Indigent Appellate Defense had taken over the matter and the Court’s letters to him were just courtesy copies. When Lawyer failed to cure the issues, the Court of Appeals dismissed the appeal. The client filed a grievance. Lawyer was late in responding to inquiries from ODC. At the hearing, Lawyer admitted misconduct, but expressed remorse, testifying that his busy trial practice prevented him from attending to details like his mail and that he was unfamiliar with the particularities of appealing an Alford plea. Four-Month Suspension, with one year of law office management monitoring upon reinstatement. The Supreme Court also ordered that Lawyer submit to the Character and Fitness review process prior to reinstatement, a condition

ordinarily reserved for suspensions of nine months or more. (Op. #28024; April 21, 2021)

10. Matter of Melnyk. Lawyer neglected six bankruptcy cases filed in 2014. He also failed to adequately communicate with the clients. In one case, Lawyer did not comply with the client's request for the client file until after the disciplinary complaint was initiated. In another case, Lawyer failed to clearly define the scope of his representation, leading the client to incorrectly assume that he was going to handle the removal of a real property lien after the conclusion of the bankruptcy proceedings. Lawyer also failed to diligently pursue two domestic cases and two traffic court cases, including failing to communicate with the clients. In those matters, Lawyer was fired and had to return fees paid in advance. Public Reprimand, plus costs, by agreement. (Op. #28032; June 2, 2021)
11. Matter of White. Lawyer filed a civil suit for a client in 2011 but did not serve it. Lawyer did not respond to multiple letters from the client. After nearly two years of inactivity and no service of process, the action was dismissed by the court with prejudice. Lawyer also delayed payment four invoices issued by a court reporter in 2013 for two years. In a federal civil case, Lawyer failed to comply with discovery requirements, resulting in sanctions against him and ultimately in summary judgment against his client. Lawyer had extensive disciplinary history: four letters of caution citing similar issues between 1998 and 2012; a confidential admonition for multiple rule violations in 2001; a public reprimand in 1997; a six-month suspension in 2008; and, a ninety-day suspension in 2011. Three-Year Suspension, plus costs, by agreement. (Op. #28038; June 23, 2021)
12. Matter of Ebener. Lawyer failed to adequately supervise the preparation of documents in connection with a 2009 real estate loan closing, resulting in his signature on a settlement statement that inaccurately represented that a down payment had been received by the purchaser. Ultimately, Lawyer was ordered to pay damages to the lender following civil proceedings that were resolved in 2014. That same year, Lawyer was ordered to prepare an order regarding the distribution of retirement funds (QRDO) in connection with a client's divorce. He was supposed to start drafting it within thirty days and the parties were to split the costs. By 2016, he had not drafted the QDRO. Although Lawyer had received confirmation in 2016 that the opposing party had paid half the costs, Lawyer did not prepare the QDRO until 2018. Public Reprimand, plus costs, by agreement. (Op. #28047; August 11, 2021)
13. Matter of LaFaye. The Supreme Court accepted Lawyer's motion to permanently resign in lieu of discipline. In his motion, Lawyer acknowledged that ODC could prove that he failed to diligently pursue a client matter and that he failed to communicate with the client. Resignation Accepted. (August 4, 2021)
14. Matter of Patterson. Lawyer neglected four clients, including failing to file an answer to a civil complaint resulting in the entry of a default judgment against one of them. Lawyer also failed to cooperate in the disciplinary investigations, ultimately being placed on interim suspension. In connection with that suspension, the Supreme Court appointed the Receiver to take possession of Lawyer's files and accounts. Lawyer failed to cooperate with the Receiver and failed to pay court-ordered costs. Eighteen-Month Suspension (retroactive to interim suspension in 2017), plus costs, by agreement. (Op. #28054; August 25, 2021)

15. Matter of Sheek. Lawyer failed to diligently and competently handle two appeals. In the first appeal, filed in 2010, the Court of Appeals sent letters to Lawyer eight times requesting he cure deficiencies in his filings. The appeal was dismissed three times because of Lawyer's failure to comply, with two reinstatements and a final dismissal in 2013. An appeal in another case, filed in 2011, was also dismissed after about a year because Lawyer failed to timely request the transcript, gave false information to the Court about ordering the transcript, and failed to properly serve his brief. The Supreme Court noted that Lawyer had previously received a letter of caution and a public reprimand for similar misconduct. One-Year Suspension, plus costs, by agreement. (Op. #28060; September 22, 2021)

### **Trust Account Misconduct**

16. Matter of Ray. The Supreme Court accepted Lawyer's motion to permanently resign in lieu of discipline. In his motion, Lawyer acknowledged that ODC could prove that he improperly removed funds from his trust account and failed to maintain required financial records. The Court noted that no clients were harmed. Resignation Accepted. (May 28, 2021)

17. Matter of Sellers. Lawyer failed to cooperate in ODC's investigation into a client complaint. Although ultimately ODC lacked sufficient evidence of underlying misconduct, Lawyer was cited for noncooperation. During the investigation into the client complaint, ODC received a notice of insufficient funds in Lawyer's trust account. After some delay, Lawyer explained that the overdraft resulted from the inadvertent payment to an employee from the trust account instead of operating account. Lawyer failed to provide documentation to support this explanation or records to demonstrate that she was otherwise compliant with trust accounting and recordkeeping rules. When Lawyer failed to comply with ODC's demands, it issued a subpoena to the bank. Although ODC did not have sufficient information to identify the purpose of the majority of the transactions in Lawyer's trust account, it was able to conclude that Lawyer commingled funds, used trust account funds for improper purposes, and failed to maintain required records or conduct required reconciliations. Disbarment (retroactive to 2017), plus full accounting, restitution, and payment of costs, by agreement. (Op. #28046; August 11, 2021)

18. Matter of Shabel. Lawyer and his law partner (see Matter of Campbell, below) represented a father in related visitation, termination of parental rights, and criminal cases on a flat fee basis. Lawyer did not have an accounting of when and how the fees were earned. Lawyer then went to work for the law firm representing the mother. Lawyer notified the client that he was terminating the representation. The fee refund check written on the trust account for Lawyer's former law firm bounced. Lawyer did not have signatory authority on his former law firm's trust account and had delegated the responsibility for managing the trust account to his law partner without verifying that all recordkeeping and safekeeping requirements were being met. The refund check to the client was one of two insufficient funds reports issued by Lawyer's bank. ODC's notices of investigation into those two NSF reports were intercepted by the firm's office manager who responded without informing Lawyer or his law partner. During the ten years Lawyer practiced with his law partner, payroll taxes were being withheld from employee paychecks, but were not being remitted to the IRS and SCDOR. Lawyer was unaware that his law partner was not taking care of these payments. Ultimately, Lawyer was held personally responsible for paying part of these taxes. Public Reprimand, plus costs, by agreement. (Op.

#28059; September 22, 2021) [NOTE: This opinion states that Rule 1.5(f) requires flat fee agreements to be in writing. In fact, Rule 1.5(f) does not require flat fee agreements to be in writing. That rule requires a written fee agreement when a client pays any type of fee in advance and the client agrees that it does not have to be held in trust. If the lawyer charges a flat fee and intends to hold it in trust until it is earned, a written fee agreement is not required. However, it is always a good idea to put fee agreements in writing, even if the rules do not require it.]

19. Matter of Campbell. A shortage of approximately \$3,300.00 in Lawyer's trust account was discovered after two reports of insufficient funds were submitted by Lawyer's bank. Lawyer's office manager intercepted ODC's mail and responded to inquiries with incorrect explanations and without notice to Lawyer. Investigation ultimately revealed that some cash receipts were not deposited into trust and disbursements were made from trust when no funds were on deposit for those purposes. In addition, Lawyer was not maintaining current records of trust account transactions and was not conducting required three-part monthly reconciliations. As a result, disbursement errors were made during the law firm's transition to a solo practice after the departure of Lawyer's law partner (see Matter of Shabel, above). Those errors included the lack of proper accounting for fees in a case in which Lawyer and his law partner represented a father in several matters related to a minor child. In addition to these errors, the ODC investigation also revealed that the law firm was not paying over payroll taxes withheld from employee paychecks and that Lawyer's office manager had been misappropriating client fees paid in advance and making deposits of personal checks into the trust account to cover the theft. Lawyer had delegated responsibility for recordkeeping and reconciliation to the office manager. The office manager was also intercepting correspondence from ODC (including that which was related to the overdrafts), purportedly to avoid upsetting Lawyer after the death of his son in a car accident. Four-Month Definite Suspension, by agreement. (Op. #28061; September 22, 2021)

### **Miscellaneous Misconduct**

20. Matter of Fisher. Lawyer was licensed in California. A dispute arose following the death of Lawyer's family member, who lived in South Carolina. Lawyer and her mother (an heir to the family member's estate) retained local counsel and filed several civil actions, including a will contest. Lawyer was admitted *pro hac vice*. The ensuing litigation, including appeals, lasted about ten years. The trial court judge imposed sanctions on Lawyer for pursuing frivolous claims. On appeal, the Supreme Court upheld the findings that sanctions were appropriate, but significantly reduced the amount. In its opinion in that appeal, the Supreme Court found that the litigation was "a series of frivolous pleadings, motions, and appeals" and that Lawyer "lacked standing and repeatedly pursued claims that were meritless and wholly without evidence to support them." Because a judge who finds that a lawyer violated the SC Frivolous Civil Proceedings Sanctions Act is required to report that lawyer to the Commission on Lawyer Conduct, this disciplinary matter followed. After a contested hearing, the Commission panel recommended a letter of caution plus costs. The Supreme Court disagreed, holding that Lawyer's "misconduct resulted in a substantial waste of time, judicial resources, and estate assets." Public Reprimand, plus costs. (Op. #28006; January 27, 2021)

21. Matter of Anderson. About nine or ten months into representation in a contested domestic case,

Lawyer started a sexual relationship with a client who “was extremely vulnerable during this time due to her emotional and financial uncertainty for both herself and her children[.]” Lawyer led the client to believe that he loved her and intended to marry her. Lawyer advised the client that he would be sanctioned if the affair was discovered, but did not advise her of the prejudice it would have on her case or of the conflict of interest it presented. Lawyer broke up with the client ten days after her divorce was finalized. Public Reprimand, plus costs, by agreement. (Op. #28020; April 7, 2021)

22. Matter of Traywick. Forty-six disciplinary complaints were filed against Lawyer after he posted offensive comments on his personal Facebook page. Lawyer admitted that twelve statements he made on Facebook violated his Oath to “maintain the dignity of the legal system” and tended to bring the legal profession into disrepute, subjecting him to discipline pursuant to Rule 7(a)(5) and (6), RLDE. After oral arguments, the Supreme Court issued its opinion finding misconduct in connection with two profanity-laced posts, one commenting negatively about females with tattoos and one using disparaging language about George Floyd, an unarmed Black man murdered by police officers. Because Lawyer did not pursue a constitutional challenge to the disciplinary action, the Supreme Court elected not to address the First Amendment, other than to say they were mindful of the Lawyer’s free speech rights and the two posts in question were not expressive, but “expressly incendiary” and “intentionally inciting” of conflict. The Court pointed out that the posts were made on a forum in which Lawyer identified himself as an attorney. Six-Month Suspension retroactive to interim suspension, by agreement, plus one hour of CLE on diversity, comprehensive anger management treatment, a one-year contract with Lawyers Helping Lawyers, and compliance monitoring by the Commission on Lawyer Conduct. (Op. #28037; June 18, 2021)

### **Judicial Misconduct**

23. Matter of Mendolsohn. Judge attempted to fix traffic tickets for a friend and a relative. In one case, Judge obtained the friend’s ticket from the clerk and falsely marked it as “appeared” before a trial judge and adjudicated “not guilty”. In the other case, Judge attached a note to his brother-in-law’s ticket addressed to the arresting officer asking him to “see [the] way clear to dismiss” the ticket. Judge resigned his judicial position and signed an agreement accepting “any sanction.” The resignation left public reprimand as the most severe sanction available to the Supreme Court. Public Reprimand, by agreement. (Op. #28018; March 31, 2021)
24. Matter of Johns. Probate Court Judge posted a fundraiser for hurricane victims on his Facebook page in violation of the judicial canon prohibiting such activity. Previously, Judge had been suspended for posts on Facebook that included comments on a pending case, endorsement of a political candidate, and a fundraiser for his church. At that time, Judge pledged to the Supreme Court that he would stop referring to himself as a judge on social media, that he would ensure that his social media activity conformed with the Code of Judicial Conduct, and that he would not participate in online fundraising. Eighteen-Month Suspension, plus costs and extra ethics education. (Op. #28064; October 13, 2021)

## **PART TWO: 2021 SC Bar<sup>1</sup> and ABA<sup>2</sup> Ethics Advisory Opinion Summaries (selected)**

1. ABA offers advice to lawyers who receive negative online reviews. The ABA advises as follows: “Lawyers are regularly targets of online criticism and negative reviews. Model Rule of Professional Conduct 1.6(a) prohibits lawyers from disclosing information relating to any client’s representation or information that could reasonably lead to the discovery of confidential information by another. A negative online review, alone, does not meet the requirements of permissible disclosure in self-defense under Model Rule 1.6(b)(5) and, even if it did, an online response that discloses information relating to a client’s representation or that would lead to discovery of confidential information would exceed any disclosure permitted under the Rule. As a best practice, lawyers should consider not responding to a negative post or review, because doing so may draw more attention to it and invite further response from an already unhappy critic. Lawyers may request that the website or search engine host remove the information. Lawyers who choose to respond online must not disclose information that relates to a client matter, or that could reasonably lead to the discovery of confidential information by another, in the response. Lawyers may post an invitation to contact the lawyer privately to resolve the matter. Another permissible online response would be to indicate that professional considerations preclude a response.”
2. SC lawyers may pay for inclusion on list of service providers distributed to bank customers. The SC Bar advises that a lawyer may pay an annual fee to participate in a service provider network to be included on a list of available real estate lawyers that a bank provides to its customers as long as the bank and the network coordinator do not recommend the lawyer’s services by making substantive statements about the lawyer’s credentials, abilities, competence, character, or professional quality; the amount of the fee charged for the listing is reasonable; and, participation is open to any attorney practicing in the area of real estate law willing to provide services. SC Bar EAO #21-01.
3. SC lawyers may deposit certain funds into non-IOLTA account. The SC Bar explains that Rule 412, SCACR, permits a lawyer to place funds that are not nominal and short-term into a designated interest-bearing trust account, rather than an IOLTA trust account, for the benefit of the client when, in the judgment of the lawyer, the potential interest will likely exceed the cost of establishing and maintaining the designated account. The Bar also reminds the lawyer that earned fees should not be held in trust and that such should be disbursed promptly, leaving only client and/or third-party funds in the designated account. SC Bar EAO #21-02.

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<sup>1</sup>NOTE: Ethics Advisory Opinions (EAOs) are issued by a committee of the South Carolina Bar. They are not approved by the Commission on Lawyer Conduct or the Supreme Court of South Carolina and have no binding effect. Practitioners are advised to read the full text of EAOs to ensure applicability and to consult with experienced ethics counsel or the SC Bar before proceeding with a questionable course of conduct.

<sup>2</sup>NOTE: ABA Formal Opinions are issued by the American Bar Association for guidance only. They have no binding effect in South Carolina. They interpret the current version of the ABA Model Rules. South Carolina has adopted a significantly modified version of the Model Rules. Practitioners are advised to read the full text of Formal Opinions and compare the Model Rules cited to the South Carolina Rules to ensure applicability and to consult with experienced ethics counsel or the SC Bar before proceeding with a questionable course of conduct.



## **PART THREE: 2021 Rule Revisions and Proposals**

Supreme Court amends Special Responsibilities for Prosecutors. The Supreme Court added new provisions to Rule 3.8, RPC, setting out the ethical duties of prosecutors who to come to learn that a person probably did not or in fact did not commit the offense for which they were convicted. The new requirements include an obligation to make reasonable efforts to promptly disclose in writing “credible, material evidence or information such that there is a reasonable probability the convicted defendant did not commit the offense” to the defendant or to the defendant's counsel and to the chief prosecutor in the jurisdiction where the conviction was obtained. If the prosecutor has knowledge of “clear and convincing evidence or information establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit,” the prosecutor is required to “make reasonable efforts to seek to remedy the conviction.” The prosecutor should make a good faith, measured by an objective standard, determination as to whether the evidence or information is of such nature to trigger the obligations in the new rule.

SC Bar House of Delegates Rejects Proposal to Add Anti-Discrimination, Anti-Harassment Rule to RPC. The HOD narrowly defeated a proposal from the Professional Responsibility Committee to amend RPC to add a prohibition on conduct a lawyer “knows or reasonably should know is discrimination or harassment based on race, color, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status that (1) violates a federal, state or local statute or ordinance that prohibits discrimination or harassment or (2) reflects adversely on the lawyer’s fitness as a lawyer.” The proposal would have set a “totality of the circumstances” test and created extensive commentary. Opposition to the proposal included belief that the current rules and comments were sufficient; concerns that the proposal was unconstitutional; and, fear of overreach or selective prosecution by the regulatory authorities.

SC Bar House of Delegates Approves Proposal to Create UPL Commission. The House approved a proposal from the Unauthorized Practice of Law Committee to create a Supreme Court Commission on UPL, similar to the Commission on Lawyer Conduct, to be responsible for reviewing and considering matters alleging unauthorized practice brought by the Office of Disciplinary Counsel. That proposal is currently pending with the Supreme Court.

SC Bar House of Delegates Approves Proposal to Establish Lawyer Dispute Resolution Program. The House approved a proposal from the Professional Responsibility Committee to create a process for resolution of disputes between lawyers arising from departures from and dissolutions of law firms as an alternative to litigation. That proposal is currently pending with the Supreme Court.

Significant Revisions to Advertising Rules Pending with SC Supreme Court. In August 2018, the ABA House of Delegates adopted changes to the Model Rules of Professional Conduct that regulate lawyer advertising (Rule 7.1 – 7.5). The changes included eliminating several content and format restrictions, addressing issues related to technology and social media, permitting nominal hospitality gifts to referral sources, and permitting direct solicitation of potential clients in most business and transactional matters. The SC Bar House of Delegates sent a proposal to adopt some, but not all, of the ABA changes. That proposal is currently pending with the Supreme Court. Non-ABA changes would include permitting advertising accolades and awards (such as Super Lawyers), eliminating the 30-day waiting period to solicit personal injury clients (except in cases

of wrongful death), and reorganizing several provisions to improve clarity.